

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs May 19, 2009

JAMES CECIL RICHARDS v. STATE OF TENNESSEE

Appeal from the Criminal Court for Hawkins County
No. 07CR0325 John F. Dugger, Jr., Judge

No. E2008-01757-CCA-R3-PC - Filed December 7, 2009

The Petitioner, James Cecil Richards, appeals as of right from the Hawkins County Criminal Court's denial of his petition for post-conviction relief challenging his guilty plea convictions for aggravated burglary, theft of property valued at over five hundred dollars, and driving on a revoked license for which he received an effective sentence of three years as a Range I, standard offender. The Petitioner challenged the voluntariness of his guilty plea, the performance of trial counsel, and the constitutionality of the search of the vehicle he was driving at the time of the offenses. Following an evidentiary hearing, the post-conviction court denied relief. Following our review, we affirm the judgment of the post-conviction court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court is Affirmed.

D. KELLY THOMAS, JR., J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and NORMA MCGEE OGLE, JJ., joined.

Gerald T. Eidson, Rogersville, Tennessee, attorney for appellant, James Cecil Richards.

Robert E. Cooper, Jr., Attorney General and Reporter; Cameron L. Hyder, Assistant Attorney General; C. Berkeley Bell, Jr., District Attorney General; and Douglas Godbee, Assistant District Attorney General, attorneys for appellee, State of Tennessee.

OPINION

The record reflects that the Petitioner entered nolo contendere pleas to aggravated burglary, theft of property valued at over five hundred dollars, and driving on a revoked license. The trial court sentenced the Petitioner to an effective sentence of three years. The Petitioner timely filed a petition for post-conviction relief in which he claims that the police conducted an illegal search of the vehicle and that his trial counsel was ineffective for assuring him that his sentence would be served concurrently with an unresolved case in Washington County Criminal Court.

The Petitioner testified at the evidentiary hearing that he pled guilty "[b]ecause I was guilty" and he felt that there was "probably enough evidence to convict" him of the offenses. He stated that

the Hawkins County offenses occurred within hours of the Washington County offenses so he was hoping for concurrent sentences. However, after going to trial in Washington County, the Petitioner was sentenced to six years as a multiple offender to be served consecutively to the Hawkins County sentence, for a total effective sentence of nine years. The crux of the Petitioner's testimony centered around his dissatisfaction with his sentences. He testified that had he known that the sentences would not run concurrently, he would have taken the Hawkins County cases to trial as well. However, he admitted that trial counsel told him that "there's no way to know what they're going to do as far as three years, whatever, but I was assuming that since they g[a]ve me three years that Washington County would give me three." On cross-examination, the Petitioner acknowledged that the trial court advised him that he had no control over the sentencing in Washington County. He also acknowledged that he could have been sentenced as a multiple offender in Hawkins County in light of his criminal history. The Petitioner presented no evidence regarding the constitutionality of the search of the vehicle.

Trial counsel testified that the Washington County cases were still pending in the grand jury at the time of the Hawkins County plea and that he warned the Petitioner that he could not predict what might happen in Washington County but that he believed that the Hawkins County prosecutors would not influence the Washington County prosecutors to seek consecutive sentences. Trial counsel recalled that the trial court also advised the Petitioner that it had no influence over the Washington County prosecutions. Trial counsel opined that the Petitioner "got what he thought he was making the Alford plea for which was three years at thirty percent. . . . The state and court did not in any way interfere with Washington County that I know of, and Washington County blew up on [the Petitioner]."

The post-conviction court held that the Petitioner failed to prove his allegations by clear and convincing evidence. Specifically, the post-conviction court found that the search of the vehicle was constitutional pursuant to a valid search warrant and that the Petitioner's plea was made knowingly and voluntarily and was not the result of ineffective assistance of counsel.

ANALYSIS

Initially, we note that the Petitioner's brief does not contain a statement of facts as required by Tennessee Rule of Appellate Procedure 27(a)(6). As such, the brief was subject to being stricken pursuant to Rule 10 of the Rules of Court of Criminal Appeals of Tennessee. However, in the interest of justice we will consider the brief as filed.

The burden in a post-conviction proceeding is on the petitioner to prove his allegations of fact supporting his grounds for relief by clear and convincing evidence. Tenn. Code Ann. § 40-30-110(f). On appeal, we are bound by the trial court's findings of fact unless we conclude that the evidence in the record preponderates against those findings. Fields v. State, 40 S.W.3d 450, 456 (Tenn. 2001). Because they relate to mixed questions of law and fact, we review the trial court's conclusions as to whether counsel's performance was deficient and whether that deficiency was prejudicial under a de novo standard with no presumption of correctness. Id. at 457.

Under the Sixth Amendment to the United States Constitution, when a claim of ineffective assistance of counsel is made, the burden is on the petitioner to show (1) that counsel's performance was deficient and (2) that the deficiency was prejudicial. Strickland v. Washington, 466 U.S. 668, 687 (1984); see Lockhart v. Fretwell, 506 U.S. 364, 368-72 (1993). In other words, a showing that counsel's performance falls below a reasonable standard is not enough; rather, the petitioner must also show that but for the substandard performance, "the result of the proceeding would have been different." Strickland, 466 U.S. at 694. The Strickland standard has been applied to the right to counsel under Article I, Section 9 of the Tennessee Constitution. State v. Melson, 772 S.W.2d 417, 419 n.2 (Tenn. 1989).

The Petitioner offered no proof regarding the alleged illegality of the search. The record supports the post-conviction court's determination that the State filed a valid search warrant. The Petitioner admitted that he pled guilty because he was guilty and he felt that the State had enough evidence to convict him of the indicted offenses. By entering into the guilty plea, the Petitioner avoided a Range II sentence for which he admitted he qualified given his criminal record. Although the Petitioner is distressed by the consecutive sentence he received in Washington County, he offered no proof to establish that trial counsel misled him or was in any way deficient in representing him in this case. In fact, the plea hearing transcript shows that the Petitioner was not promised concurrent sentences as part of the plea agreement. Therefore, we conclude that the record supports the findings of the post-conviction court.

CONCLUSION

In consideration of the foregoing, the judgment of the post-conviction is affirmed.

D. KELLY THOMAS, JR., JUDGE